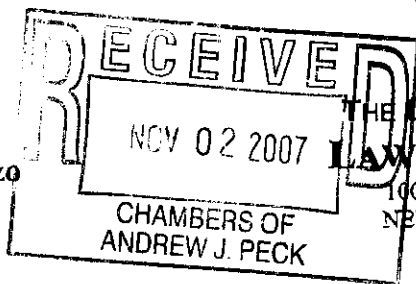


MICHAEL A. CARDOZO  
Corporation Counsel



THE CITY OF NEW YORK  
LAW DEPARTMENT  
100 CHURCH STREET  
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November 2, 2007

**BY FACSIMILE**

Hon. Andrew J. Peck  
United States Magistrate Judge  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 1370  
New York, New York 10007

**MEMO ENDORSED** *p2*

Re: Rodney Brown v. Dept. of Correctional Services et al.  
07 Civ. 5753 (GEL) (AJP)

Dear Judge Peck:

I am an Assistant Corporation Counsel in the Office of the Corporation Counsel Michael A. Cardozo. I write on behalf of defendant Department of Correction ("DOC") to request an adjournment of the conference currently scheduled for November 6, 2007. This is the first request for an adjournment of this conference. Because plaintiff *pro se* is incarcerated, it is not possible to contact him to obtain his consent. As set forth more fully below, an adjournment is needed for two reasons.

First, an adjournment is needed because defendant DOC anticipates moving to dismiss the complaint. On November 1st, your chambers contacted my colleague Alan Rosinus and scheduled a pretrial conference in this matter for Tuesday, November 6th. At that time, Mr. Rosinus notified your chambers that a request for an extension of time to respond to the complaint, until November 30, 2007, was pending with Judge Lynch, the District Judge assigned to this case. Judge Lynch has since granted that request.

Defendant anticipates that it will file a fully dispositive motion to dismiss in this matter, because plaintiff's allegations make out a state negligence claim at best and do not rise to the level of an Eighth or Fourteenth Amendment violation actionable under 42 U.S.C. § 1983. See Stubbs v. Dudley, 849 F.2d 83, 85 (2d Cir. 1988). If defendant's motion is granted, discovery in this matter clearly will not be necessary. Accordingly, defendant requests that the

conference be adjourned until either after defendant's motion is decided, or, if an answer is submitted, until after such submission.

Second, an adjournment is needed because November 6, 2007, is Election Day, and the Office of the Corporation Counsel is closed.

Thank you for your consideration of this request to postpone the pretrial conference until after defendant's motion to dismiss is decided.

Respectfully,



Abigail Goldenberg (AG 4378)  
Assistant Corporation Counsel

cc: Via overnight mail  
Rodney Brown  
Plaintiff *pro se*  
#07-A-4616  
Franklin Correctional Facility  
62 Bare Hill Rd  
PO Box 10  
Malone, NY 12953

## MEMO ENDORSED 11/2/07

1. Conf. postponed for 11/6 at 11/7 at 10 AM. Corp. Counsel > to arrange for Mr. Brown's telephone for 11/7.  
2. 2nd Conf. will convene at the conference whether the case can be "disposed" in coming to the 1st Conf. of 11/6 or other status conf.  
3. 2nd Conf. Corp. Counsel should be knowledgeable about any statutory limitations or other matters which the lit. could help to provide some - if the case can go to state court.

SO ORDERED:

Hon. Andrew Jay Veck  
United States Magistrate Judge

By: Mr. [Signature] (for)  
Mr. Brown / [Signature]  
[Signature]

BY FAX

# FAX TRANSMITTAL SHEET



**ANDREW J. PECK  
UNITED STATES MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT**

Southern District of New York  
United States Courthouse  
500 Pearl Street, Room 1370  
New York, N.Y. 10007-1312

Fax No.: (212) 805-7933  
Telephone No.: (212) 805-0036

**Dated:** November 2, 2007

**Total Number of Pages:** 3

TO	FAX NUMBER
Abigail Goldenberg, Esq. Alan Rosinus, Esq.	212-788-0940

## **TRANSCRIPTION:**

### **MEMO ENDORSED 11/2/07**

1. **Conf. adjourned from 11/6 to 11/7 at 10 AM. Corp. Counsel is to arrange for Mr. Brown's telephonic participation.**
2. **The Court will inquire at the conference whether the case can be "transferred" in some way to the N.Y. Court of Claims or other state court. The Asst. Corp. Counsel should be knowledgeable about any statute of limitations or other problems - and whether the City could stipulate to avoid same - if the case were to go to state court.**

**Copies to: Rodney Brown (Mail)  
Judge Gerard E. Lynch**